

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

AUG 08 2008

JOHN F. GORCORAN, CLERK
BY: 
DEPUTY CLERK

JOHN THOMAS FUTCH,

Petitioner,

v.

VIRGINIA DOC,

Respondent.

Civil Action No. 7:08-cv-00460

MEMORANDUM OPINION

By: Samuel G. Wilson

United States District Judge

Petitioner John Thomas Futch, a Virginia inmate proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Futch is challenging his 2008 drug convictions in the Scott County Circuit Court. As grounds for relief, Futch raises several claims of ineffective assistance of counsel and alleges that he is owed sentencing credit for jail time served. The court finds that Futch has failed to exhaust his available state court remedies and, therefore, dismisses his petition without prejudice.

I.

On April 9, 2008, in the Scott County Circuit Court, Futch was convicted of two counts of distributing a schedule II controlled substance and sentenced to a total of two years incarceration. Thereafter, Futch filed a post-trial motion in the Scott County Circuit Court requesting credit for jail time served and that motion was denied on May 5, 2008. Futch states that he sought further review to the Court of Appeals of Virginia, but has received no response. Finally, Futch concedes that he has not presented his current claims to the Supreme Court of Virginia.

II.

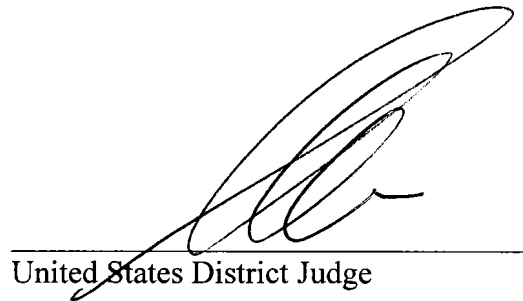
A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon

ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code §8.01-654. In this case, it is clear from the face of his petition that Futch has yet to pursue his claims in the Supreme Court of Virginia. Accordingly, the court dismisses Futch's instant petition, without prejudice, as unexhausted.

III.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the petitioner.

ENTER: This 8th day of August, 2008.



United States District Judge